

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1058 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

STATE OF GUJARAT

Versus

SASUDDIN VALIBHAI NR.MARKET SURENDRANAGAR

Appearance:

Mr.S.A.Pandya, Addl.P.P. for the appellant
Mr. A.J.Shastri for Mr. D.D.Vyas, Advocate for the respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/10/96

ORAL JUDGEMENT

Respondent No.1 (original accused No.1) is the partner of respondent No.2 firm. Respondent No.1, alongwith other partners, was prosecuted for offence punishable under section 7 read with section 16 of the Food Adulteration Act,1955, by the Food Inspector, Surendranagar. As can be seen from the case papers, on 24-12-1985 at about 1.30 p.m., the complainant - Food

Inspector - purchased 600 grams of turmeric powder from the respondents and sent the same to Public Analyst after following due procedure as laid down under the Rules. The report of the Public Analyst revealed that the sample contained foreign starch identified as rice starch and, therefore, it was adulterated one. On the basis of the said report, the Food Inspector filed a complaint against the respondents and two other partners of the firm in the Court of the learned Chief Judicial Magistrate, Surendranagar on 20-11-86.

At the end of the trial, the learned Magistrate found the respondents guilty of the offence punishable under section 16 of the Food Adulteration Act and convicted them and sentenced respondent No.1 to suffer S.I. for six months and pay a fine of Rs.1000/- i/d to suffer further S.I. for two months, whereas respondent No.2 has been sentenced to pay a fine of Rs.1000/-. Original accused Nos.3 and 4 were acquitted of the offences levelled against them.

The respondents herein preferred an appeal being Criminal Appeal No. 3 of 1988 in the Sessions Court at Surendranagar. However, the learned Sessions Judge by his judgment and order dated 8th October, 1990 while confirming the order of conviction, reduced the sentence of imprisonment awarded to respondent No.1 and substituted it by the one of simple imprisonment till rising of the Court. The State of Gujarat has, therefore, filed this appeal against the order of reduction of sentence of imprisonment.

Mr. S.A.Pandya, learned Addl. P.P., appearing for the appellant, has submitted that the learned Sessions Judge has committed an error in reducing the order of imprisonment of sentence in favour of respondent No.1. In his submission, the learned Sessions Judge ought not to have modified the order of sentence of imprisonment especially when he upheld the order of conviction passed by the learned Magistrate. Mr. Shastri, learned Advocate appearing for the respondents, on the other hand, submitted that the Courts below have failed to appreciate and consider the report submitted by the Public Analyst. In his submission, the Public Analyst who analysed the sample had not prepared the report on the same day and there was a delay in preparing the same. In view of this, Mr. Shastri submits, no reliance can be placed on the report of the Public Analyst and, on the contrary, though the respondents have not filed any appeal against the judgment and order of conviction and sentence, they are entitled to be

acquitted.

This Court (Coram: H.R.Shelat,J.) in Criminal Appeal No. 374 of 1987 decided on 30-5-1996 has laid down that if the report is not prepared and signed by the Analyst on the same day when the sample sent to him is analysed, the report prepared will cease to have any evidentiary value. This view was taken on the ground that the result of one sample may not be mixed or linked up with the another sample and the accused may not have to suffer because of the mistake on the part of the Laboratory and, secondly, to be sure and certain about the report of the very sample and no other. In the instant case, as can be seen from the report of the Public Analyst, he had examined the sample on 6-1-1986 while he had prepared and signed the same on 20-1-1986 i.e. after a period of about 14 days from the date of examination of the sample. In view of this fact, the judgment rendered by brother Shelat,J would squarely apply to the facts of the present case and, therefore, I am of the view that no evidentiary value could have been attached to the report of the Public Analyst which was the sole basis for establishing the charges against the respondents. If this report is taken out of consideration, then there remains no other material which would connect the respondents with the crime alleged against them. In view of the above, I am of the opinion that the respondents are entitled to be acquitted of the offence alleged against them.

In the result, the appeal filed by the State for enhancement of sentence is dismissed and the order of conviction and sentence passed against the respondents is set aside. The fine ,if paid, shall be refunded to the respondents.

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